INDEX

	Page
Opinions below	1
Jurisdiction	1
Question involved	2
Statutes involved	2
Statement	2
Argument	4
Conclusion	8
Appendix	9

CITATIONS

Cases:	
Cook County Nat'l Bank v. *United States*, 107 U. S. 445	5
Dickson's Estate, In re, 197 Wash. 145	7
Emory v. *St. James Distillery (Mo.)*, 143 S. W. (2d) 318	7
Hansen Bakeries, Inc., In re, 103 F. (2d) 665	8
Korman v. *Federal Housing Adm.*, 113 F. (2d) 743	8
Miller, In re, 105 F. (2d) 926	8
Sloan Shipyards Corp. v. *U. S. Shipping Board Emergency Fleet Corp.*, 258 U. S. 549	4
Stamford Auto Supply Co., In re, 25 F. Supp. 530	8
United States v. *Guaranty Trust Co.*, 280 U. S. 478	4, 5
United States v. *Summerlin*, 310 U. S. 414	4
Wagner v. *McDonald*, 96 F. (2d) 273	8
Whan v. *Green Star S. S. Co.*, 22 F. (2d) 483, certiorari denied *sub nom. Adams* v. *United States*, 276 U. S. 629	4
Statutes:	
Section 3466 of the Revised Statutes (U. S. C., Title 31, sec. 191)	5, 7, 9
Title I, Act of June 27, 1934, c. 847, 48 Stat. 1246–1247 (U. S. C., Title 12, secs. 1701–1706)—	
Sec. 1	9
Sec. 2	10
Act of April 3, 1936, c. 165, 49 Stat. 1187	6
Miscellaneous:	
Sixth Annual Report of the F. H. A., p. 5	6

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 707

THE CITY OF NEW YORK, PETITIONER

v.

UNITED STATES OF AMERICA, AND WAYNE C. TRACE AS ASSIGNEE FOR THE BENEFIT OF CREDITORS OF LONG ISLAND SASH & DOOR CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the Supreme Court of New York (R. 5–8) was entered without opinion. The opinion of the Appellate Division of the Supreme Court of New York (R. 45–47) is reported in 259 App. Div. 688. The memorandum order of the Court of Appeals (R. 50–51) is reported in 284 N. Y. 145.

JURISDICTION

The order of the Court of Appeals was entered November 26, 1940 (R. 50). The petition for a

writ of certiorari was filed January 21, 1941. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION INVOLVED

Whether a debt owned by the United States, acquired, by assignment from a financial institution insured under Title I of the National Housing Act, prior to the debtor's general assignment for the benefit of creditors, is entitled to priority under Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra,* pp. 9–11.

STATEMENT

On February 15, 1939, the Long Island Sash & Door Corporation, being insolvent, made an assignment for the benefit of creditors to respondent Trace (R. 9–13). Theretofore the corporation had executed two promissory notes payable to the National City Bank of New York, a financial institution insured by the Federal Housing Administrator under the National Housing Act (R. 24–25, 33–34). The corporation defaulted in its payments of these notes, and, on June 27, 1938, the Federal Housing Administrator, by draft drawn on the Treasurer of the United States, reimbursed the National City Bank for the unpaid balances (R. 22–23, 31–32). The notes in question were

assigned to the United States by the National City Bank (R. 26, 35). The United States thereafter filed proof of claim in the assignment proceedings in the amounts of $316.60 and $725.80, for the unpaid balances due it on the notes (R. 19, 28).

Petitioner, the City of New York, likewise filed proof of claim in the assignment proceedings for certain sales and business taxes in the amount of $1,200.00 owed to it by the corporation (R. 17).

In confirming the account of the assignee, which disclosed a balance on hand of $561.70, the Supreme Court of New York, County of Queens, after directing the payment of certain fees and other claims concerning which there is no controversy, entered an order directing that the balance of the assets in the hands of the assignee be paid to the City of New York (R. 7). On appeal the Appellate Division of the Supreme Court modified the order of the Supreme Court and granted priority to the claim of the United States for the debt owing to it on account of the assignment of the notes in question (R. 43–44). On appeal the Court of Appeals affirmed, one judge dissenting (R. 50–51). On January 7, 1941, the Court of Appeals on motion of the petitioner amended the remittitur by stating that the sole ground upon which it based its affirmance was that the provisions of Section 3466 of the Revised Statutes of the United States create in the United States a priority superior to that enjoyed by the City of New York (R. 56).

ARGUMENT

Petitioner contends that the Court of Appeals of New York erred in holding that the claim of the United States in question is entitled to any priority [1] under Section 3466 of the Revised Statutes, because it was assigned to the United States by a financial institution insured under the National Housing Act and that the purpose of that act would be defeated if priority were granted to the claims of the United States. It urges that the reasoning of this Court in *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, supports this contention. Alternatively, it argues that in any event the question is one of importance which has not been but should be decided by this Court.[2] We submit that the decision below accords with the

---

[1] The petitioner does not question that the debt due the United States in the instant case, if entitled to priority at all, should be paid before the debt due it.

[2] Petitioner suggests (Br. 15–17) that the Federal Housing Administration or the Federal Housing Administrator is a separate legal entity and that a claim of such a separate legal entity is not entitled to priority. Cf. *Sloan Shipyards Corp.* v. *United States Shipping Board Emergency Fleet Corp.*, 258 U. S. 549, 570. The short answer, however, to that suggestion is that the claim was not assigned to the Federal Housing Administration, but to the United States, thereby becoming a claim of the United States. *United States* v. *Summerlin*, 310 U. S. 414, 416. Even had the claim been assigned to a corporation acting as agent for the United States and not to the corporation as such, it would be entitled to priority. *Whan* v. *Green Star. S. S. Co.*, 22 F. (2d) 483 (C. C. A. 2d), certiorari denied *sub nom. Adams* v. *United States*, 276 U. S. 629.

decisions of this Court and that the question is not now one which calls for review by this Court.

1. The decision below is not in conflict with *United States* v. *Guaranty Trust Co.*, 280 U. S. 478. In that case this Court held that Section 3466 was inapplicable to claims of the United States arising under Title II of the Transportation Act, 1920, which authorized loans to railroads and made specific provisions for security. The Court concluded that to grant priority to such claims would gravely impair the private credit of the railroads and thus defeat the purpose of the Transportation Act "to preserve for the nation substantially the whole existing transportation system" (*id.* at 484), and that the express inclusion by Congress of the provisions for security "evidenced unmistakably its purpose to rely, for obtaining payment of the Government's advances, upon means other than the priority provided by Section 3466" (*id.* at 485). *Cf. Cook County National Bank* v. *United States,* 107 U. S. 445, 449.

The *Guaranty* case has no application here. There is nothing in the language or policy of the National Housing Act which evidences a purpose of Congress that Section 3466 should not apply to claims of the United States acquired under the Act. The Act makes no provision to secure the claims of the United States. And the suggestion that the granting of priority would defeat the policy of the statute is plainly insubstantial. The

avowed purpose of the Act is to provide credit for housing improvements and construction as a means of increasing employment in the building trades. The granting of priority to the United States would in no way discourage private persons from advancing funds for this purpose. The Act authorizes the Administrator to insure loans of financing institutions up to an amount more than sufficient to guarantee against expectable losses.[3] The contractors, material men, and laborers receive payment in cash out of the insured loans and are not required to look to the credit of the home owners for compensation. Home owners who have received one loan under the statutory scheme, may finance additional improvements in the same manner.

Whether the granting of priority to claims of the United States (or to those of the states for taxes) would tend to discourage private persons from ad-

[3] The Act, as originally passed, provided that the Administrator could insure a financial institution in an amount not exceeding 20% of the total amount of the loan made by the institution. By the Act of April 3, 1936, c. 165, 49 Stat. 1187, the loss insured against was reduced to 10% of the total. From the inception of the F. H. A. up to December 31, 1939, the disbursements of the Federal Housing Administration to financial institutions insured under Title I of the National Housing Act amounted to less than 2½% of the total amount loaned. Sixth Annual Report of the F. H. A., p. 5. The financial institution is reimbursed in full for each defaulted note as long as the total amount of all defaults does not exceed 10% of the total of all advances and loans made by the institution under the Act.

vancing credit in connection with risks which cannot be insured under the Act, is a matter for conjecture. It is clear, however, that it was not the purpose of the National Housing Act to improve the general credit of home owners for every conceivable purpose. Moreover, the deterrent effect of granting priority would obviously be less than the reservation of the specific lien or mortgage normally required as security for private advances for improvements or building construction.

2. The question presented is not one of importance requiring a decision of this Court. While this question, like that of the right of a bona fide purchaser of commercial paper to be free from the defense of lack of consideration, is one which may frequently arise, the answer is reasonably free from doubt. The state and lower federal courts have uniformly recognized that the United States is entitled to priority on claims acquired under the National Housing Act before bankruptcy or assignment for the benefit of creditors. *In re Dickson's Estate,* 197 Wash. 145; *Emory* v. *St. James Distillery* (*Mo.*), 143 S. W. (2d) 318;[4] *Wagner* v.

[4] In the *Emory* case the Springfield Court of Appeals of Missouri had held that a claim assigned to the United States through the Federal Housing Administrator was entitled to priority under Revised Statutes 3466, but it further held that wage claims, entitled to priority under a Missouri statute, took priority over a claim of the United States. The Government proposes to seek certiorari to review the decision of the Springfield Court of Appeals in this limited respect.

McDonald, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administration*, 113 F. (2d) 743 (App. D. C.); Cf. *In re Hansen Bakeries, Inc.*, 103 F. (2d) 665, 666 (C. C. A. 3d); *In re Miller*, 105 F. (2d) 926, 927–928 (C. C. A. 2d); *In re Stamford Auto Supply Co.*, 25 F. Supp. 530, 531 (N. D., Tex.). And the contentions advanced by petitioner for a contrary view appear to be insubstantial. In the absence of a conflict of decision, there is no occasion, we submit, for review by this Court.

CONCLUSION

The decision below is correct. There exists no conflict. We respectfully submit that the petition for a writ of certiorari should, therefore, be denied.

FRANCIS BIDDLE,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
MELVIN H. SIEGEL,
PAUL A. SWEENEY,
Special Assistants to the Attorney General.

FEBRUARY 1941.